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IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1945

No. 11,387

FRED REYNOLDS and
JOHN PERCY REYNOLDS,

Petitioners,

—vs—

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**TO THE HONORABLE THE SUPREME COURT OF
THE UNITED STATES:**

Petitioners Fred Reynolds and John Percy Reynolds submit herewith their petition praying that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered December 21, 1945, (R95-98), affirming a judgment of conviction of petitioners in the District Court of the United States for the Southern District of Alabama, (R11) (R13), and in support thereof respectfully show unto this Honorable Court as follows:

STATEMENT OF MATTER INVOLVED:**I.**

Petitioners were convicted under each of five counts of an indictment charging them with violations of Sections 415 and 418 (a) of Title 18 of the United States Code, and each was sentenced to pay a fine of \$1,000.00, and to imprisonment for one year and one day in a penal institution to be designated by the Attorney General, (R.11-13). Said counts charge a violation as follows:

1. Transporting and causing to be transported in interstate commerce from Brewton, Escambia County, Alabama, to Flomaton in the State of Florida, 92 slot machines of the value of \$13,800.00, knowing the same to have been stolen. (R2).
2. Transporting and causing to be transported in interstate commerce from Flomaton in the State of Florida to Mobile County, Alabama, 56 slot machines of the value of \$8,400.00, knowing the same to have been stolen. (R.2-3).
3. Transporting and causing to be transported in interstate commerce from Flomaton in the State of Florida to Mobile County, Alabama, 28 slot machines of the value of \$4,200.00, knowing the same to have been stolen. (R.3).
4. Transporting and causing to be transported in interstate commerce from Flomaton in the State of Florida to Escambia County, Alabama 5 slot machines of the value of \$1,000.00, knowing the same to have been stolen. (R.4).

5. Conspiring to violate the provisions of Sections 415, Title 18 of the United States Code, by transporting and causing to be transported in interstate commerce stolen property of the value of more than \$5,000.00. (R.4-6).

A demurrer, (R.7), which the Court overruled, (R10), was filed to each count insisting, among other things, that no violation of law was charged since the counts did not negative ownership of the property in the defendants and because the value of the property as alleged in the third and fourth counts was less than \$5,000.00.

II.

The facts of the case show that Alabama Law Enforcement Officers, (R.63-66), under authority of a search warrant seized approximately 100 used slot machines, (R.55), from the premises of Fred Reynolds at Flomaton, Alabama, which is on the Alabama-Florida state line. These machines which were not in good working condition, (R.51), were turned over to the county sheriff who stored them in the courthouse at Brewton, Alabama. A few days later, the circuit solicitor filed a petition to condemn the machines and gave notice to Fred Reynolds. (R.29) The room in which the slot machines were stored was broken into and the machines removed. (R.45) Some of them were later sold to a company in New Orleans and also to persons in Jackson, Mississippi. These machines were identified as being removed from the barn of John Percy Reynolds in Flomaton, State of Florida. The court over the timely objection of the defendants permitted the purchasers, who were witnesses at the trial, to tes-

tify how much they had paid John Percy Reynolds for the machines in order to establish their fair market value, a requisite item of proof under the provisions of the statute, Section 415, Title 18, United States Code. (R.47,50,54). Defendants objected that the fair market value had been and was fixed by Maximum Price Regulation 429, as promulgated by the Price Administrator under authority of the Emergency Price Control Act of 1942, as amended. (R.44-47-50-51-52). However, the court ruled that the Office of Price Administration had nothing to do with the case, (R.44), and denied the admission of the regulation in evidence either for the purpose of fixing the value, or as a factor to be considered by the jury in determining the value of the alleged stolen property. (R.89). The Circuit Court of Appeals followed this view. (R.97).

On an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, the judgment of the District Court was affirmed and an opinion rendered December 21, 1945. (R.95). A petition to set aside said judgment and to grant appellants a rehearing, (R.99), was denied on January 16, 1946, without an opinion. (R.104).

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 21, 1945. A copy of said opinion is contained in the Transcript of Record. (R.95).

Jurisdiction to review the judgment in question is invoked under Section 347 (a) of Title 28 of the United States Code and Sections 415 and 418 (a) of Title 18 of the United States Code; also Maximum

Price Regulation No. 429, (R.73), found in 8 Fed. Register, page 9877, and Amendment No. 1 thereto, (R.86), 8 Fed. Register, page 13742.

STATUTE INVOLVED:

The pertinent provisions of Maximum Price Regulation 429 and Amendment No. 1 thereto are as follows:

Part 1366 - Used Consumer Durable Goods (MPR 429.)

Certain Used Consumer Durable Goods.

In the judgment of the Price Administrator, the maximum prices established by this Maximum Price Regulation No. 429 are and will be generally fair and equitable and will effectuate the purpose of the Emergency Price Control Act of 1942, as amended, and executive order number 9250. A statement of considerations involved in the issuance of this regulation has been issued simultaneously herewith and has been filed with the division of the Federal Register.

1366.1. Maximum prices for certain types of used consumer durable goods. Under the authority vested in the Price Administrator Executive Order No. 9250, Maximum Price Regulation No. 429 (Ceiling Prices for Certain Types of Used Consumer Durable Goods), which is annexed hereto and made a part hereof is hereby issued.

Authority: 1366.1 issued under Pub. Laws 421 and 727 77th Cong.: E. O. 9250, 7 F. R. 7871.

Maximum Price Regulation No. 429—Ceiling Prices
for Certain Types of Used Consumer Durable Goods.

Contents

Section 1.*****

(o) All kinds of coin operated vending machines cigarettes, candy, beverages, etc.; and coin operated weighing machines and juke boxes, pin ball machines and other amusement machines.

Section 4. What Transactions and persons are covered by this regulation. (a) This regulation covers all sales by any person to any other person with the following exceptions only:

Section 7. How to determine the class of a used article.

(a) Class I. An article is a Class I article if:

(1) No part is missing which is necessary to make the article fully useful.

(2) The article is in good working condition, can be used by the consumer for the purpose intended without further repair and the article is clean and its appearance is good.

(b) Class II—An article is a Class II article if it is not a Class I article.

Section 8. How to find the ceiling price for each class.
The ceiling price for the used article must be not more than:

Class I. $\frac{3}{4}$ (75¢) of new.

Class II. $\frac{1}{3}$ (33 1/3) of new.

No sales, attempts to sell, offers to sell or deliveries shall be made at prices higher than the ceiling price. Of course, sales may be made at lower than the ceiling price. ****

Sec. 12. Evasion, licensing and enforcement.—(a) Evasion.

You must not evade any of the provisions of this regulation by any scheme or device, or by any practice which has the effect of getting a higher-than-ceiling price. Specifically, you cannot offer to sell used goods covered by this regulation only on condition that the customer agree to pay for reconditioning, repairing, or rebuilding to be performed by you before or after he buys the merchandise or only on condition that the customer buys goods which he does not wish to buy. If the customer buys an article from you, and asks you to rebuild it or recondition it, the total amount which you receive on account of the sale of the goods and on account of the reconditions or rebuilding cannot exceed the ceiling price of the goods if you offered the goods for sale as Class I goods.

You may not use the published list price as the price of the new article under section 6, if that published list

price was generally not observed by sellers of new goods. Section 6 required you to find the actual selling price of the new article.

(b) ****

(c) Enforcement. On and after September 1, 1943, you are subject to the criminal penalties, civil enforcement actions, license suspension proceedings and suits for treble damages provided for by the Emergency Price Control Act of 1942, as amended, if you violate any provision of this regulation.

Sec. 13. ****

(MPR 429. Amdt. 1.)

Section 4 (a) (1) is amended to read as follows:

(1) Sales by a householder who is selling goods which he originally bought for use. Sales by dealers or auctioneers whether for their own account, or for the account of a householder or anyone else, and sales of used goods out of residence as a regular business are covered.

Section 8 is amended to read as follows:

Sec. 8. How to find the ceiling price for each class. The ceiling price for the used article must be no more than:

Class I. 3/4 (75%) of new.

Class II. (33 1/3) of new.

QUESTIONS PRESENTED:

1. Whether or not the indictment should have alleged ownership or the possession of the property alleged to have been stolen and transported in interstate commerce in some person other than defendants in order to negative any right or interest of the defendants therein.
2. Whether or not Maximum Price Regulation No. 429, as amended, should have been allowed in evidence to establish value or to be considered by the jury as a factor in establishing value of the property alleged to have been stolen and transported in interstate commerce.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT:

1. None of the counts of the indictment in this case allege ownership of the property alleged to have been stolen and transported in interstate commerce, or the name of the person entitled to its possession. From aught appearing under the allegations of the indictment, the property belonged to the petitioners and they were entitled to its possession. Had the property belonged to petitioners and been stolen from them and then recovered by them from the thief, the petitioners, by transporting the property after its recovery, would certainly not be violating the law. Yet, they would be transporting stolen property. The indictment, therefore, should have alleged ownership in someone other than the petitioners. In its present form, the facts alleged do not constitute a crime. Pleadings are always construed more strongly against the pleader especially

in charging a criminal offense. The indictment should set forth fully, directly and expressly and without any uncertainty or ambiguity all of the elements necessary to constitute the offense intended to be punished. Since the indictment did not aver ownership of the property alleged to have been stolen and transported in interstate commerce, the Petitioners demurrer on this ground should have been sustained. The court erred in not doing this and for this reason the writ should be granted as prayed for.

2. A further reason of equal importance for granting the writ is to rectify the interpretation placed by the District Court and the Circuit Court of Appeals on price regulations promulgated by the Office of Price Administration under authority of the Emergency Price Control Act. In this case the court ruled that Maximum Price Regulation 429, (R.73), was not applicable and should not be considered in determining the value of the property alleged to have been stolen and transported in interstate commerce. (R. 44, 89, 90,91). The purpose of fixing prices by law during the recent national emergency was to state the reasonable worth or value of an article or service and to thereby combat and prevent inflation. The court should have permitted the jury to consider Maximum Price Regulation 429:

First, because it fixed by law the price of the slot machines in question and had this price regulation been applied, the value of the slot machines would have been less than the jurisdictional amount set forth in the statute. Section 415 of Title 18 of the United States Code.

Second, the Maximum Price Regulation 429 was, in any event, evidence of the value of the slot machines and even if the court decided that the regulation was not conclusive, the jury should have been instructed that it could consider the prices fixed by the price regulation as evidence of the reasonable market value of the property alleged to have been stolen.

By ruling out the price regulation entirely as irrelevant and immaterial, the court committed error which should be corrected by a reversal of its judgment.

The questions involved in this case and presented by this petition are substantial and petitioners respectfully submit are grounds upon which this honorable court should grant the writ of certiorari as prayed for.

Wherefore your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding the said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the same case entitled Fred Reynolds and John Percy Reynolds, Appellants, versus United States of America, Appellees, No. 11,387 to the end that the said case may be reviewed and determined by this court as provided by Section 347 (a), Title 28 of the United States Code, or that your Petitioners may have such other or further relief or remedy in the premises as this court may deem appropriate and in conformity with said provision of the United States Code and that the said judgment of said Circuit Court

of Appeals in the said case and every part thereof may be reversed by this Honorable Court.

Sam M. Johnston, Counsel
for petitioners.

Of Counsel:

C. L. Hybart

